IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8115 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDO NIPPON CHEMICAL CO LTD & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR SV RAJU for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 2,

MS ARCHANA RAVAL AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/01/2006

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Additional Secretary, Home Department, State of Gujarat dtd.27/8/1999 in imposing the penalty of Rs.1,56,000=00 (Rupees One Lac Fifty Six Thousand only) under sec.104 of the Bombay Prohibition Act, 1949 (hereinafter referred to as “the Prohibition Act” for convenience) for compounding the offence under sec.77(B) of the Bombay Prohibition Act and for breach of condition of the Pass/Permit.

2. The petitioner Company is engaged in manufacturing Di Ethyl Pthalate (hereinafter

referred to “the DEP” for convenience) and it is the case of the petitioner that the said DEP is used in manufacture of Perfumes, Sprays and Agarbatti which are manufactured by large number of cottage industries and Cooperative Societies giving employment. The petitioner Company is required to use Special Denatured Spirit (hereinafter referred to as “the SDS” for short) and as the law of prohibition is in force in the State of Gujarat, the State Government has framed Rules which are known as Bombay Denatured Spirit Rules, 1959 (hereinafter referred to as “the Rules” for short) under sec.143 of the Bombay Prohibition Act, 1949 which relates to import, export, sale, use of and possession of Denatured Spirit i.e. including SDS. “Denatured” is defined under sec.2(10) of the Act subjected to a process prescribed for the purpose of rendering unfit for human consumption. Sec.2(43) defines “Spirit”. That permit was required to be obtained for the purpose of importing SDS under Rule 51 of

the said Rules and any person desiring to import the Denatured Spirit was required to apply to the Collector for import pass containing the particulars as stated in Rule 51. It appears from the record that the petitioner Company required SDS, it applied for a permit under Rule 51 of the said Rule. It is the contention on behalf of the petitioner that on receipt of the said application under Rule 51, the concerned officer of the Prohibition Department on being satisfied that there was no objection in granting the import pass, granted the import pass/permit. It also appears from the record that the pass / permit was issued to import 12,000 ltrs. SDS with 2% DEP. And in fact when the said SDS was imported form Maharashtra,it was found that the said SDS along with 2% DEP, there was 0.005% Denatonium Saccharide was also found, for which there was no pass / permit at all and therefore, proceedings were initiated against the petitioner by issuing a show cause notice and the

petitioner admitted the breach, however, requested to compound the offence as required under sec.104 of the Prohibition Act and considering the fact that 1,56,000 ltrs. of goods was imported, the Additional Secretary, Home Department directed the petitioner to pay an amount of Rs.1,56,000=00 in lieu of the of the cancellation or suspension of the pass / permit, while compounding the offence. Being aggrieved by and dissatisfied with the same, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3. Mr.S.V. Raju, learned advocate appearing on behalf of the petitioner has vehemently submitted that as such 2% DEP was found as the goods was imported from Maharashtra and in the State of Maharashtra, the Commissioner of Central Excise, Maharashtra in order to prevent the misuse of potable purpose and for proper denaturation of alcohol, directed to add 2% DEP

in the SDS while supplying SDS and therefore, the petitioner was constrained to add 0.005% Denatonium Saccharide. He has also submitted that the offence which is alleged to have been committed by the petitioner, was a technical one and therefore, the imposition of payment of Rs.1,56,000 is too excessive and requested to reduce the same. In fact, in one point of time, Mr.Raju, learned advocate appearing on behalf of the petitioner requested to set aside the entire impugned order directing the petitioner to make payment of Rs.1,56,000, as according to him, the petitioner has, in fact, not committed an offence.

4. On the other hand, Ms.Archana Raval, learned AGP while opposing the present petition has submitted that in view of the admission by the petitioner and request made to compound the offence under sec.104 of the Prohibition Act, it is not open for the petitioner now to contend

that the petitioner has not committed any offence. She has also further submitted that as such in view of the admission on the part of the petitioner that it was their mistake, the imposition of penalty of Rs.1,56,000 under sec.104 of the Act while compounding the offence, is just and proper more particularly considering the quantity of 1,56,000 ltrs. imported by the petitioner. Consequently, it is requested to dismiss the present petition.

5. Having heard the learned advocates appearing on behalf of the parties and in the facts and circumstances of the case, it is required to be noted that while admitting the present petition, this Court has granted ad-interim relief on condition that the petitioner deposits 25% of the amount of penalty imposed by the impugned order. Mr.Raju, learned advocate appearing on behalf of the petitioner has submitted that even prior thereto, the petitioner

has already deposited 25% of the amount of penalty, thus, in all the petitioner has deposited 50% of the amount of penalty imposed by the impugned order. In view of the admission on the part of the petitioner requesting to compound the offence under sec.104 of the Prohibition Act, now it is not open for the petitioner to contend that the petitioner has not committed an offence.

6. In the present case, it is not in dispute that the pass / permit issued in favour of the petitioner was for import of 12,000 ltrs. Of SDS with 2% DEP and what was found at the time of inspection after import was made, was that over and above the aforesaid limits, 0.005% Denatonium Saccharide Bitterant / Bitter was found. It is the contention on behalf of the petitioner that in view the policy of the State of Maharashtra, adding of such Bitterant / Bitter was must, otherwise nobody can sale the SDS without adding the Bitterant / Bitter. In that regard, it is

required to be noted that such a permission could have been granted to import SDS with such Bitterant / Bitter provided the Government of Gujarat is informed, more particularly such a permission is required considering the law of prohibition in fore in the State of Gujarat. The petitioner requested to compound the offence by invoking the provisions of sec.104 of the Prohibition Act and the competent authority has passed the impugned order directing the petitioner to pay penalty of Rs.1,56,000 towards compounding the offence. Considering the application given by the petitioner and the fact that even subsequently also, the petitioner was granted pass / permit to import SDS with Bitterant / Bitter directing the petitioner to pay Rs.1,56,000 while compounding the offence, seems to be on higher side. Under the circumstances and considering the fact that the petitioner has deposited / paid 50% of the amount of penalty imposed by the impugned order, the

ends of justice would be met if the impugned order is modified by reducing the penalty to 50% i.e. from Rs.1,56,000 to Rs.78,000 (Rupees Seventy Eight Thousand only) and the impugned order is required to be modified to the aforesaid extent. It is the case of the petitioner that the petitioner has deposited 50% amount of penalty.

7. For the reasons as aforesaid, the petition succeeds in part. The impugned order passed by the Additional Secretary, Home Department, State of Gujarat dtd.27/8/1999 is modified by reducing the amount of penalty from Rs.1,56,000-00 to Rs.78,000-00 for compounding the offence under sec.104 of the Prohibition Act. The petitioner is directed to pay the aforesaid amount of Rs.78,000, if not paid. If the amount of Rs.78,000 is already paid, the petitioner is not required to pay the same, however, if the petitioner has paid lesser amount than 78,000, then the petitioner shall deposit the balance

amount from Rs.78,000 within a period of FOUR WEEKS from the date of this order with interest at the rate of 12% per annum from the date of passing of the order till date. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.SHAH,J.)

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